

1 the lack of accountability in this particular area can be
2 traced directly to the complexity of this issue.

3 So I am really glad that we have got the three of you
4 here today. This is going to be one of those hearings that
5 I talk about a lot in this Committee. That is, this subject
6 matter is, as you can tell by the room, not the sexiest in
7 Washington. This is not going to be--we are not going to
8 have breaking news online about this hearing today. But
9 this is, you know, important, important work. This is
10 really--brings getting into the weeds new meaning.

11 And as we look--the irony is, everyone is running
12 around this building giving political statements about how
13 we have to bring down the spending of the Federal
14 Government. Well, here we have a line item in the Federal
15 Government that is north of billions and billions and
16 billions of dollars, and yet it is not going to garner the
17 attention as some other sexy headline that I am sure that
18 they are filming people about as we speak over in the main
19 building.

20 So let me give the formal opening statement that has
21 been prepared and then we will get to your testimony and
22 questions. Unfortunately, and Senator Portman asked me to
23 convey to you that he cannot be here today even though he
24 thinks this is a terrific subject for this Committee to go
25 at, and I think he would have liked to have been here to

1 discuss even the complexities of this, but he could not, and
2 so he asked me to convey that to you and I am happy to do
3 so. He and I are working well together on this Committee.

4 Today's hearing focuses on how the Government buys
5 food. Every day, the Government provides meals to our
6 soldiers at home and overseas, veterans, Government
7 employees, and to our children through the National School
8 Lunch Program. Every year, billions of taxpayer dollars are
9 paid to the food service contractors who supply the food for
10 dining facilities on military ships, bases, and on the
11 battlefield, as well as at Government buildings, hospitals,
12 and schools.

13 When food service contractors buy food for the
14 Government, they get rebates from the manufacturers,
15 suppliers, and vendors. In their simplest form, rebates
16 often are based on volume purchasing that contractors make
17 from food manufacturers and distributors. For example, a
18 contractor may order cases upon cases of cereal from a food
19 manufacturer for which it will receive a rebate in the form
20 of a discounted price or a cash payment from the
21 manufacturer.

22 In cost reimbursable contracts, the contractor will
23 then submit invoices for its food purchases to the
24 contracting agency. The problem is that the invoice price
25 may not include the rebates received from the manufacturer

1 or the distributor. So the agency then pays the full amount
2 of the invoice and the contractor pockets the difference.
3 When contractors buy food with the taxpayers' money, they
4 should not be able to keep the change.

5 Recently, reports of fraud and other abuses on food
6 service contracts have snowballed. Last July, the New York
7 Attorney General's Office announced a \$20 million settlement
8 with Sodexo, one of the largest food service management
9 contractors in the world, regarding allegations that the
10 company failed to pass along rebates that it received
11 through its contracts with the New York public schools
12 participating in the National School Lunch Program.

13 In September 2010, the Department of Justice announced
14 a \$30 million settlement with U.S. Food Service, another
15 major contractor, based on allegations that it had
16 overcharged the Government by inflating food prices on
17 contracts with the Defense Department and the Veterans
18 Administration.

19 The Department of Justice also has a major case pending
20 against Public Warehousing Company, now known as Agility,
21 based in part on allegations that Public Warehousing Company
22 submitted false information, manipulated prices, and
23 overcharged the Government for food and related services
24 under its contract to supply fruit to the military in Iraq.

25 This June, the Department of Agriculture's Inspector

1 General announced that it would be conducting its third
2 audit of food service management contracts in the last
3 decade. Both of its previous audits, conducted in 2002 and
4 2005, found serious problems with companies overcharging
5 schools by withholding rebates.

6 The message that these reports and investigations send
7 is clear. We are not doing enough to make sure that the
8 Government is not getting cheated. With increased scrutiny
9 of rebate withholding, contractors have turned to new
10 practices in order to avoid passing rebates on to the
11 Government or to pad their own profits. One such method is
12 to simply call the rebate another name, such as "marketing
13 incentives" or "vendor consideration."

14 What is more, it seems obvious that the problem is even
15 more widespread. For example, some companies have said that
16 their accounting practices prevent them from accounting for
17 the rebates owed to individual clients. Even if the company
18 is giving the Government the rebates that may be
19 attributable for the individual contract, there is no way
20 for the Government to recoup the overall rebates that may be
21 attributable to discounts based on purchases made by an
22 entire Federal agency or the Federal Government overall.

23 We are here today to learn from some of the Nation's
24 experts on this issue on how contractors can manipulate
25 their prices and invoices. We will discuss barriers to

1 effective oversight of these contracts, including the
2 complexity of the contractors' relationships with their
3 vendors and suppliers and the ambiguities in the Federal
4 regulations relating to rebates. We will also discuss
5 whether the practices that they have seen are exceptions or
6 part of a pattern of fraud in these types of contracts
7 across the Federal Government.

8 In this time of belt tightening, we need to be more
9 careful than ever to ensure that taxpayer dollars are not
10 being wasted, particularly because every dollar that is lost
11 through rebate schemes is a dollar that we cannot use to
12 feed our soldiers and the children who need nutrition.

13 I thank the witnesses for being here today and I look
14 forward to their testimony.

15 [The prepared statement of Senator McCaskill follows:]

1 Senator McCaskill. And now let me introduce the
2 witnesses and we will begin the testimony.

3 It is the custom of this Committee to swear in all
4 witnesses that appear before us, so before I do your
5 introductions, if you do not mind, I would ask you to stand.

6 Do you swear that the testimony you will give before
7 this Subcommittee will be the truth, the whole truth, and
8 nothing but the truth, so help you God?

9 Ms. Fong. I do.

10 Mr. Carroll. I do.

11 Mr. Tiefer. I do.

12 Senator McCaskill. Thank you all.

13 Phyllis Fong was sworn in as the Inspector General of
14 the U.S. Department of Agriculture on December 2, 2002.
15 Prior to her appointment at USDA, Ms. Fong served as the
16 Inspector General of the U.S. Small Business Administration
17 from 1999 until 2002. Among many other positions of
18 distinction, Ms. Fong also served as the Assistant General
19 Counsel for the Legal Services Corporation and an attorney
20 with the U.S. Commission on Civil Rights. Ms. Fong is also
21 currently serving as Chair of the Council of Inspectors
22 General on Integrity and Efficiency.

23 John Carroll is an Assistant Attorney General in the
24 Criminal Division of the New York's Attorney General, where
25 he is leading an investigation of billing and marketing

1 practices among food service companies. He is also the
2 Deputy Chief of the recently formed Taxpayer Protection
3 Bureau. Mr. Carroll specializes in civil and criminal
4 investigations involving allegations of public corruption as
5 well as complex corporate investigations.

6 Charles Tiefer is currently a professor at the
7 Baltimore School of Law, where he teaches government
8 contracting and legislative process. Professor Tiefer also
9 recently served as a Commissioner on the Commission for
10 Wartime Contracting in Iraq and Afghanistan, a commission
11 that is very near and dear to my heart and did excellent
12 work.

13 By the way, I should tell you, Professor Tiefer, that
14 yesterday, Jim Webb and I hosted here at the Capitol one of
15 the investigators for the Truman Committee. She was one of
16 the first women ever hired in Congress to be an investigator
17 for a Congressional Committee and she was in charge of
18 investigating on the Truman Committee the civilian manpower
19 issues. She came over--she was a 1943 graduate of Vassar
20 and came to work for the Committee and worked for the
21 Committee for several years. So Senator Webb and I had a
22 chance to visit with her. She is anxious to see the report
23 of the Commission, asked us to send her one. She lives in
24 Virginia and is a fascinating woman, and if you are
25 interested, I would be glad to give you her contact

1 information, because she told some great stories about the
2 Truman Committee and the work it did and it was terrific.

3 Professor Tiefer has also served in both Chambers of
4 Congress as Legal Counsel and investigated controversies
5 related to Bosnia as well as the Iran Contra Affair.

6 This is--we would ask that your testimony be around
7 five minutes, but take as long as you would like, and we
8 will begin with you, Inspector General Fong.

1 TESTIMONY OF PHYLLIS K. FONG, INSPECTOR GENERAL,
2 U.S. DEPARTMENT OF AGRICULTURE

3 Ms. Fong. Thank you, Chairman McCaskill, for the
4 opportunity to testify today about the work that our office
5 has done to help improve the Food and Nutrition Service's
6 oversight of the School Lunch and Breakfast Programs and the
7 relationships with food service management companies.

8 You have my full statement for the record, so let me
9 just highlight the key points.

10 In fiscal year 2010, approximately 43 million children
11 participated in the School Lunch and Breakfast Programs,
12 which together served an estimated 7.2 billion meals in
13 14,000 school districts around the country involving \$12.5
14 billion in Federal funds. Generally, as you note, the food
15 service management companies who contract to provide these
16 meals are required to pass discounts, rebates, and credits
17 for USDA-donated commodities back to the local school food
18 authorities, and those savings can then be used to benefit
19 the students and the local school meal programs.

20 Over the last ten years, we have issued several reports
21 identifying problems in this program. As you note, in 2002,
22 we audited eight food service management companies
23 contracting with 65 local authorities in seven States and we
24 found that five of those eight companies improperly retained
25 \$6 million in cost savings that should have been passed on

1 to the local food authorities.

2 The management companies, who had fixed-rate contracts,
3 received \$5.8 million in USDA-donated food, but they did not
4 credit this amount to their local food authorities'
5 accounts. This happened because the FNS requirements on
6 these programs were not clear and because some companies
7 revised their contracts to allow themselves to retain
8 savings that should have gone to the local food authorities.

9 The remaining \$280,000 involved companies with cost
10 reimbursable contracts, and in those situations, the bid
11 solicitations would require that rebates and credits be
12 passed along to the food authorities. In those situations,
13 the companies that won the bids either modified their
14 contracts or they ignored the contract requirements.

15 So in 2005, we did another audit to take a closer look.
16 We looked at one management company that had cost
17 reimbursable contracts in 22 States and we found that the
18 company violated its contracts with 106 food authorities in
19 eight States by not crediting them with discounts, rebates,
20 and other cost savings of about \$1.3 million.

21 Together, when you look at the recommendations that our
22 audits made, we recommended that FNS needed to develop
23 specific contract terms for State agencies and local
24 authorities to use when contracting with food service
25 management companies. We felt that the terms should ensure

1 that SFAs benefit from the value of the food donated by USDA
2 and also that the SFAs benefit from any discounts or rebates
3 that companies received. We also recommended that FNS amend
4 its regulations to require that these contract terms be
5 included in specific contracts, to require that State
6 agencies approve contracts before the local districts sign
7 them, and to require State agencies to have the local
8 districts enforce the contract provisions. In response to
9 our recommendations, FNS revised its regulations in 2007,
10 and in 2009 issued updated guidance to the State agencies
11 and local authorities.

12 The issue of food service management companies
13 improperly retaining savings, however, continues to be a
14 concern, and due to express concerns that we have received
15 from Congress and others, we have decided to initiate a new
16 audit to assess the effectiveness of these corrective
17 actions that FNS has implemented and to assess the
18 effectiveness of State agency action. We will also be
19 looking to see if the food service management companies with
20 cost reimbursable contracts are passing along the discounts
21 and savings as they should be.

22 So, in conclusion, we are committed to working with
23 USDA to strengthen this program and we welcome the
24 opportunity to answer your questions and appreciate the
25 opportunity to be here today. Thank you.

1 [The prepared statement of Ms. Fong follows:]

- 1 Senator McCaskill. Thank you, Ms. Fong.
- 2 Mr. Carroll.

1 TESTIMONY OF JOHN F. CARROLL, ASSISTANT ATTORNEY
2 GENERAL, OFFICE OF THE ATTORNEY GENERAL OF THE
3 STATE OF NEW YORK

4 Mr. Carroll. Chairman McCaskill, please accept the
5 greetings and the thanks of Attorney General Eric
6 Schneiderman for taking testimony on this important topic,
7 what are known as in the industry sometimes as off-invoice
8 rebates. And indeed, Senator McCaskill, you raised the
9 issue of transparency and the Attorney General believes that
10 is exactly the problem with this practice, because it is
11 inherently opaque.

12 I am an Assistant Attorney General and the Deputy Chief
13 of General Schneiderman's Taxpayer Protection Bureau. Our
14 focus, like that of this Committee, is to investigate and
15 prosecute allegations of fraud and waste in Government
16 contracting.

17 The United States and local governments provide
18 millions of Americans with meals every day, and as a general
19 proposition, individuals who are receiving meals from the
20 Government are among the most vulnerable. The meals
21 provided by the Government include through the National
22 School Lunch Program, meals in health care facilities, and
23 meals for soldiers in the field.

24 The meals are often provided through Government
25 contractors known in this industry as the food service

1 management companies. Typically, such companies assume
2 complete operational responsibility for delivering meals in
3 a facility, whether in a Marine mess hall or a local
4 elementary school. One task delegated to food service
5 companies which contract with schools and others to provide
6 this service is the daily task of ordering food to make
7 meals for children, hospital patients, and soldiers. Food
8 is bought either directly from food manufacturers or through
9 distributors. These food vendors pay food service
10 management companies millions of dollars to buy food from
11 them. These payments are called rebates or, tellingly, off-
12 invoice rebates.

13 The Attorney General's investigation has identified
14 several problems with the system which, in other contexts,
15 has been labeled as an unlawful kickback. First, the most
16 obvious problem. Many food service contracts, as, Senator,
17 you pointed out, are some version of cost-plus arrangements,
18 but rebates are most often off-invoice. So, in other words,
19 Government customers who should be getting credit for
20 rebates have no way to actually account for the numbers
21 because the entire rebating process takes place behind the
22 scenes, and so they have no way to police their contracts.

23 But there is a second, almost more important and
24 definitely more insidious issue, which is that the rebates
25 create a conflict of interest, and our investigation has

1 seen the conflict of interest play out in such a way that
2 very often food service companies will make food choices
3 driven by the chase for rebates, which for some companies
4 can amount to hundreds of millions of dollars in income,
5 rather than issues of quality or other preferences. So, for
6 example, food service companies are more likely to enter
7 into rebating agreements with large agribusiness and may
8 thereby forego entering into business arrangements with
9 local farmers, which would serve to thwart the National
10 School Lunch Program's efforts to create farm-to-school
11 efforts.

12 So, in conclusion, I am happy to take questions, and
13 once again, the Attorney General expresses his gratitude for
14 your interest.

15 [The prepared statement of Mr. Carroll follows:]

1 Senator McCaskill. Thank you very much, Mr. Carroll.
2 Mr. Tiefer.

1 TESTIMONY OF CHARLES TIEFER, PROFESSOR OF LAW,
2 UNIVERSITY OF BALTIMORE SCHOOL OF LAW, AND FORMER
3 COMMISSIONER, COMMISSION ON WARTIME CONTRACTING IN
4 IRAQ AND AFGHANISTAN

5 Mr. Tiefer. Senator McCaskill and Subcommittee, thank
6 you for the opportunity to testify today. I am a Professor
7 of Law, as you noted, at the University of Baltimore Law
8 School and the author of a case book on Federal Government
9 contracting. For three years, I was Commissioner on the
10 Commission on Wartime Contracting in Iraq and Afghanistan.
11 Senator McCaskill, you understated what you did for that
12 Commission. You were one of the two cosponsors. You
13 created it. You nurtured it. You inspired it. And, not
14 least, you never let us forget the spirit of Senator Truman
15 and the Truman Committee during World War II. That was a
16 very high standard you asked us to measure up to.

17 For the Defense Department operations in the war zone,
18 the Government purchases the necessary food by its prime
19 vendor contract managed by the Defense Logistics Agency, or
20 DLA. In recent years, massive criminal and civil fraud
21 charges have been brought against the food services
22 contractor Public Warehousing Company, renamed Agility. The
23 scale of these schemes is breathtaking. Public Warehouse
24 Contracting, PWC, earned \$8.5 billion in revenue from its
25 Iraq food supply contracts, and press accounts have

1 discussed that a settlement of the charges would be on the
2 order between \$500 million, \$600 million, lawyers said \$750
3 million. Trial has not yet occurred, so I will use the word
4 "alleged," as you did, for purposes of the criminal case,
5 but that does not prevent DLA or GAO or this Subcommittee
6 from taking advantage of what is set forth in the indictment
7 to make the necessary repairs in the program so that this
8 does not recur.

9 In brief, and the pattern is very similar to what my
10 fellow witnesses described, the contract is supposed to
11 charge the Government a delivered price, which is what the
12 suppliers are supposed to charge, plus the fee charged by
13 PWC, or the prime vendor. And we are talking about, even
14 though this is a wartime supply program, United States food.
15 It is easy to parse the indictment and see that the bulk of
16 what is being talked about is food that--meat, chicken,
17 desserts produced in the United States, supplied in the
18 United States, from U.S. suppliers. And PWC was forbidden
19 to keep rebates or discounts from suppliers. Its pricing
20 intended that this be passed along to the United States
21 Government. But instead, it used its marketing muscle to
22 obtain and to keep such discounts, and what made it a fraud
23 case, a criminal fraud case, was covering this up by false
24 statements.

25 I am going to take one of the indictment's examples in

1 a little detail. In 2005, U.S.--I am quoting from the
2 indictment--"U.S. manufacturer S.L. engaged in discussions
3 with defendant PWC. This was about discounts." I might say
4 parenthetically, the indictment refers to these suppliers
5 with initials, but the press and blogs have attributed the
6 initials to well-known food suppliers like Sara Lee.

7 "Through the discussions between defendant PWC and S.L.
8 about discounts, PWC insisted that the discount be called an
9 early payment discount, even though S.L. did not want to use
10 that term and suggested any discount offer to PWC be called
11 what it was, a marketing allowance, a rebate. Defendant PWC
12 insisted the allowance be labeled an early payment discount.
13 Ultimately, S.L. agreed to use the label."

14 I could tick off the other U.S. suppliers mentioned in
15 the indictment. My statement covers these.

16 I want to move on to, to me, the allegations in the
17 indictment and the other--just as Mr. Carroll pointed out
18 that there were conflicts of interest here, I would point
19 out that this amounts to corruption, that the prime
20 contractor who is engaging in kickbacks makes false reports
21 to the Government in words, in numbers, and even creates an
22 entire false stream of reporting. It corrodes the whole
23 system of supply for the Government and it develops a whole
24 network of suppliers who may, to some extent, be witting in
25 this and are willing to comply with the crookedness, to

1 cooperate in it.

2 I have some suggestions for what can be done about
3 this. I think certifications by the prime vendor and
4 declarations of what they receive would box them in, would
5 make it extremely easy to prosecute them or have False
6 Claims Act cases qui tam brought against them. There is
7 also an extensive study, internal study by DLA which is
8 extremely embarrassed that this happened on its watch and it
9 could be helped to remember the reforms that it knows it
10 needs to do.

11 Thank you, Senator.

12 [The prepared statement of Mr. Tiefer follows:]

1 Senator McCaskill. Thank you very much.

2 Let me start--I have got a lot of specific questions,
3 and I promise you I will not ask all of them, but is this
4 something--and this is an interesting concept, that someone
5 buys a lot of volume from what essentially is a broker, a
6 type of middleman, and the middleman service they are
7 providing is going to go out and locate the various foods
8 that this program needs. But the volume that is necessary
9 is dictated by the fact that it is the Federal Government,
10 the military or School Lunch Program or whatever. Are they
11 engaging in getting this kind of extra padding when they are
12 dealing with potential folks that are not the Government?
13 Is this like the common practice in this industry, that you
14 get an extra padding on the contract because you are buying
15 more than one case of Cheerios?

16 Mr. Carroll. May I?

17 Senator McCaskill. Sure.

18 Mr. Carroll. The agreements can run with food
19 distributors, between food distributors and food service
20 companies, so, for example, not to--just to use the name,
21 just an example, a Cisco or U.S. Foods would be examples of
22 distributors, and rebates can run between the distributors,
23 like Cisco or U.S. Foods, and the Sodexos of the world. Or
24 it can run between a chicken wholesaler, a large national
25 chicken wholesaler and the food service company. And the

1 agreements are not limited to particular customers, the ones
2 that the Attorney General's Office has reviewed. They run--
3 so, in other words, the agreement could be 25 cents rebate
4 on every case of chicken delivered to Sodexo, and so they--
5 Senator McCaskill. So it does not matter who is buying
6 it?

7 Mr. Carroll. Exactly.

8 Senator McCaskill. And is that the excuse they use?

9 Mr. Carroll. That is one excuse, that the agreements
10 actually have to do with volume across all business lines.
11 So, for example, it could be business for the Senate mess
12 hall or it could be business for a company, and what the
13 company--what the food service companies will say is, well,
14 we buy for so many different entities, that is why we are
15 entitled to these discounts. But the excuse kind of starts
16 to fall apart if you consider that the buying power of the
17 United States, based on that, the United States would
18 certainly also be entitled to those discounts.

19 Senator McCaskill. Right. Right. So let me start
20 with you, Ms. Fong. What recommendations are still
21 outstanding on your audits that were done in 2002 and 2005?
22 I mean, how many findings do you have with recommendations
23 that they have not yet implemented?

24 Ms. Fong. Well, we went back to our audit records in
25 preparation for this hearing, and currently, FNS has

1 addressed all of our recommendations and has said to us that
2 they have implemented all the corrective actions that are
3 necessary. And by redoing their regulations that they
4 issued in 2007, they believe that they have addressed the
5 specific recommendations we made. Now, the whole--one of
6 the purposes of our new audit is to actually go out and see
7 whether their actions have been effective in dealing with
8 the problems that we had seen earlier in the decade.

9 Senator McCaskill. Well, they certainly clarified it
10 in 2007.

11 Ms. Fong. Yes.

12 Senator McCaskill. I mean, no one can say that is
13 ambiguous at this point.

14 Ms. Fong. That is right.

15 Senator McCaskill. Mr. Carroll, for the investigations
16 that you have done on the rebate withholding, can you give
17 some estimate on the amount of dollars we are talking about
18 in terms of what percentage of the overall contract price
19 could you attribute to these withheld rebates?

20 Mr. Carroll. Generally, the rebate amounts that the
21 food service companies receive on particular products--so it
22 could be anything from a jar of a particular spice or it
23 could be, as I said, a case of chicken--run between five and
24 50 percent of the price that is charged to the customer.
25 So, generally, they fall average--in the National School

1 Lunch Program, for example, it could be around ten to 15
2 percent of the price. But there is a lot of variability
3 because, obviously, you are buying very different foods to
4 serve in a school program as opposed to a corporate dining
5 room.

6 Senator McCaskill. When they are asked for the excuse
7 for keeping the rebates when they are aware that it is in
8 violation of the contracts, do any of you have any--can you
9 articulate what their excuse is, even though it appears
10 fairly clear the contracts are obviously trying to make sure
11 those rebates are passed on to the taxpayers, what is the
12 excuse? Is the excuse the accounting issue?

13 Mr. Carroll. One issue certainly is the accounting,
14 especially for a large multinational corporation. But, you
15 know, the response there is the system is kind of designed
16 to be complicated. So, in other words, they enter into
17 agreements--

18 Senator McCaskill. Right.

19 Mr. Carroll. --to buy things, you know, nationwide and
20 that involves millions of dollars of payments, and then in
21 order to get down to how many cases of Cheerios went to this
22 school and how much rebates is that school entitled to, it
23 is a complicated exercise, but that is the way the system,
24 in the view of the investigation, is intentionally designed.
25 In fact, one target I reviewed some accounting records for

1 entered into an agreement with its offshore parent in order
2 to further obscure rebate flow of where the revenues were
3 going.

4 Senator McCaskill. And that could be this no value
5 added addition of some company that is there just to be an
6 excuse for a place to park the rebate?

7 Mr. Carroll. That is right, and actually, the case
8 that we settled yesterday involved a relatively smaller
9 regional player and about \$800,000 in rebates, but we
10 settled the claim for \$1.6 million based on the False Claims
11 Act damages. They entered into what they called marketing
12 agreements, as you mentioned, Senator, and we reviewed the
13 marketing agreements and the so-called work product that
14 they supposedly delivered in exchange for marketing
15 services, and in the view of the investigation, at least,
16 the so-called marketing services were illusory.

17 Senator McCaskill. So they called it marketing
18 services, created a company and ran it through there in
19 order to add some legitimacy to parking it.

20 Mr. Carroll. They created a special department and--
21 exactly, Senator, to disguise the--because if it was called
22 "rebates," obviously, it would have had to have been
23 returned. But if it is called something else--

24 Senator McCaskill. Professor Tiefer, did the Public
25 Warehousing Company case--are there rebates involved in all

1 of the charges involving them? Is this all similar to what
2 you indicated about S.L. and PWC, the renaming the rebate an
3 early payment bonus?

4 Mr. Tiefer. Well, it comes down to that. It comes
5 down to a rebate. There were a variety of ways that they
6 sort of squeezed a rebate out of the stream as it went past
7 them. Another way which is more complicated is that out of
8 their fee, the fee they get from the Government, which is
9 supposed to be all the things they do, including some
10 processing and packaging and consolidating, they can do it
11 themselves or they can pay a consolidator. That is supposed
12 to come out of their fee. But instead, they found ways to
13 throw--have the suppliers pay for that, add it to what the
14 supplier was charging, and so the Government--which is not
15 supposed to pay for that, it is supposed to be a reduction
16 in what they are making--ends up not being a reduction in
17 what they are making. So it is a roundabout rebate.

18 Senator McCaskill. Right. Right. Was the contract
19 flawed in the PWC case? Was there a flaw in the way the
20 contract was drafted? I mean, if you could go back and look
21 at the way--I mean, in so many of the wartime contracts, I
22 do not need to tell you, we said to people, tell us what we
23 need, write the contract, and tell us what we need to pay.
24 It was all on the side of the contractor to do way too much
25 of the scoping and the actual purview of the contract. Were

1 the underlying contracts in the PWC case actually flawed?

2 Mr. Tiefer. Well, they certainly need improvement. I
3 will say this, because when I and a staff team, we talked to
4 DLA, went to their center in Philadelphia and delved into
5 it, they said, we are not set up to deal with a fraudulent
6 prime vendor. Our assumption is we are dealing with people
7 who are honest. And so there is a limit to how well you
8 can--they were saying, you can deal with outright fraud,
9 people who make false statements, who lie about what they
10 are doing.

11 With that aside, yes, the contract is designed as a
12 fixed-price contract which has the least visibility for the
13 Federal Government. But because of the way that the charges
14 get added together from two different streams, it is not as
15 a practical matter fixed price.

16 Senator McCaskill. Right.

17 Mr. Tiefer. The supplier price can go up and down.
18 Things can be hidden in it. Things can be subtracted from
19 it. You can move the back door from it. So it is drafted
20 without protecting the Government.

21 Senator McCaskill. So it is called a fixed-price
22 contract, but really, it is anything but.

23 Mr. Tiefer. I agree. Yes. That is the problem.

24 Senator McCaskill. I mean, and so the irony is that
25 they are going to tout this fixed-price contract, oh, it is

1 not cost plus, it is not cost plus, it is fixed price, but
2 in reality, it is fixed price just masquerading when it is
3 really cost plus.

4 Mr. Tiefer. Yes, and therein lies a big problem in
5 changing things. As Mr. Carroll said, the industry out
6 there will say that the industry practice is to do things by
7 fixed price and we should not impose on them any contract
8 but a fixed price. They will fight against visibility of
9 their suppliers on behalf of the United States Government.

10 Senator McCaskill. Yes. Well, we are a big customer.
11 We ought to have more leverage. I mean, you would think
12 that we could bring these guys to their knees if we were
13 tough negotiators, but I do not think we have been very
14 tough negotiators, obviously, in light of the problems that
15 we are hearing about on all of these contracts.

16 Should we look--what kind of contract should we look
17 to? I mean, if we were going to redo--let us just assume we
18 could wipe the slate clean and we were actually going to
19 exert the power that the Federal Government has, and we were
20 going to say, this is the way we are going to contract to
21 buy food. What input can the three of you give me as to how
22 we would design that model?

23 Ms. Fong. Well, on the School Lunch Program, as you
24 mentioned, the complexity of the relationships between the
25 parties is what really comes into play here. One of the

1 issues that the Department faces is how can it regulate
2 those kinds of contracts between a third party and a local
3 school district, and I think where FNS has ended up, after
4 consultations with OMB, is that the only way to really reach
5 that is to mandate contract clauses that USDA can enforce
6 against the local school districts, not necessarily against
7 the food management company. And so this is, I think, going
8 to be a really interesting review that we do to see if those
9 contract provisions are going to do the trick, and
10 basically, those provisions would require the food service
11 management companies to pass on all rebates and to
12 specifically and transparently identify the rebates. A very
13 interesting provision, and I think if it works, it will be a
14 good model.

15 Senator McCaskill. Well, and we will be anxious to
16 see, because, obviously, they are trying.

17 Ms. Fong. Right.

18 Senator McCaskill. So if it has worked, then that is
19 the time that we need to migrate it over to Department of
20 Defense and to other places in the Federal Government,
21 because everybody is buying food.

22 Is this issue that they cannot account for the rebates-
23 -I mean, obviously, they are keeping track of this stuff
24 internally, right? They are making up companies to park it.
25 I mean, this sounds like an unladylike term that Harry

1 Truman would use that has to do with farm animals and bulls.
2 It does not sound to me--I have a hard time imagining, with
3 the complexity of the accounting that has to be embraced by
4 this kind of contract model, if this is the norm in the food
5 service industry, that they could not easily pull the thread
6 and tell us how much the rebates are that they are getting
7 for these individual contracts within the Federal
8 Government.

9 Mr. Carroll. I can tell you, Senator, that that is
10 absolutely correct. In fact, a lot of decisions are made--
11 for example, employees, food service company employees are
12 evaluated on the basis of manager of school or manager of
13 Marine base, how much of your purchases are compliant, and
14 compliant means on a list of products that generate rebates.
15 So the companies have very sophisticated systems to keep
16 track of and collect rebates from vendors.

17 Senator McCaskill. So they are actually encouraging
18 their folks to utilize those contracts that are most rebate-
19 heavy internally and they are keeping track of it for
20 purposes of judging how well their employees are doing at
21 maximizing their profit?

22 Mr. Carroll. Absolutely, Senator, and--

23 Senator McCaskill. Are they giving bonuses based on
24 this? Do you know?

25 Mr. Carroll. Well, the personnel evaluations that the

1 Attorney General's Office reviewed showed that that was a
2 component in the form evaluating--

3 Senator McCaskill. That makes sense.

4 Mr. Carroll. --so--among other factors, I think, that
5 it is fair to say that played a role in whether employees
6 received bonuses or not. And we also did see e-mail
7 traffic, for example, where one locale manager--because the
8 way the business works is you take an employee of the food
9 service company and they are installed in the school or on
10 the base and--or in the hospital and they often wear the
11 school's uniform, the facility's uniform, and there is e-
12 mail traffic where, for example, one food service company
13 employee was writing to headquarters saying, "I found a
14 great source for locally grown tomatoes," and the response
15 came back, "Don't do that. That is not where the best
16 rebates are."

17 So to pick up on another issue that Professor Tiefer
18 brought out, which is the game that seems to be being played
19 is it is changing the name of the revenue flow. So, for
20 example, in our most recent subpoena, the length of the
21 definition of the word "rebate" is, I think, 250 words,
22 because the name will change and then, for example, in the
23 National School Lunch Program, it calls for rebates to be
24 returned, but it does not necessarily say that contingent
25 compensation has to be returned. So--

1 Senator McCaskill. Or marketing incentives.

2 Mr. Carroll. Or marketing incentives or whatever the
3 specific word is, so--

4 Senator McCaskill. Or you get a bigger bonus at
5 Christmas if you buy more of this stuff.

6 Mr. Carroll. Right. Exactly, Senator. So the focus
7 kind of as we have evolved and started asking smarter
8 questions is, tell us about the revenue flow that is going
9 in what seems to be the wrong direction. In other words, if
10 I am buying cases of chicken, why is the chicken distributor
11 sending me a check? So whatever you call it, you have to
12 tell me what is that flow, how much cash is that.

13 Senator McCaskill. So on accounting, they can keep
14 track of it if it is going to be their money. They just
15 cannot keep track of it if it is going to be our money.

16 Mr. Carroll. That is correct, Senator.

17 Senator McCaskill. And you brought up a point about
18 the local tomatoes. You know, one of the things we are
19 struggling with in this country is how we hold on to
20 independent producers of food in this country. We obviously
21 have--my State, for example, we used to have 27,000 feeder
22 pig operations in Missouri. It was the largest feeder pig
23 operations in the country in my State. Now, I think we are
24 down to about 7,000 or fewer, and that is all because they
25 have been bought by or are doing contracts solely with the

1 big guys.

2 So as I have gotten to know and understand the issue of
3 independent producers versus the mega large multinational
4 food corporations, it is with a sense of urgency that I
5 realize we have got to hold on to the ability of independent
6 food producers to get a product to market.

7 Clearly, this system is not working in their favor,
8 because they cannot afford--an independent producer cannot
9 afford to pay a quarter on every box of tomatoes, whereas
10 the big guys that are dealing with huge, huge volume can.
11 So, I mean, the example you gave in that e-mail is a perfect
12 example of how local independent farmers are being denied a
13 market in their local schools because they cannot compete
14 with the Ciscos of the world in terms of the rebate culture.
15 Is that in any way an inaccurate summary of the problem?

16 Mr. Carroll. I think that is absolutely right,
17 Senator. You could have a situation where a grower has--or
18 there could be a farm two blocks away from the school that
19 is growing potatoes, but the food service company is not
20 going to enter into rebate agreements with every little
21 farmer and every little farmer does not have the wherewithal
22 to engage in that kind of transaction.

23 So, for example, we saw one e-mail string where the
24 local school manager was saying, we want to buy local
25 apples. It is good for the business, it is the right thing

1 to do, et cetera, but they do not have--we do not have a
2 mechanism to collect rebates. Can we forego the rebate
3 issue? And then, interestingly, what happens is the cost of
4 the apples to buy them locally goes up so that the producers
5 can pay the rebate.

6 Senator McCaskill. So what they do is they force a
7 price increase on the local market so that they can take a
8 piece of it?

9 Mr. Carroll. I have seen an example, at least one
10 specific example, of that.

11 Senator McCaskill. So what--can, right now in the
12 School Lunch Program, if--there is a high school down the
13 street from where I live. If Kirkwood High School said, we
14 want to go buy--there is a great nursery that has been in
15 Missouri for years and years and has amazing peaches and
16 amazing apples. If they said, we want to go out and buy
17 from Eckert's or from these other nurseries, we want to go
18 buy these, can they not do that? Can they just go directly
19 and buy local products, or is it because they are tied to
20 the contracts with these big mega in between companies? Do
21 you know? Do you guys know?

22 Mr. Carroll. They are allowed to purchase locally and
23 there are rules that permit--this is more a USDA issue than
24 my area of expertise. They are certainly allowed to buy
25 locally, but as I said, it is a choice for the food service

1 company whether they buy locally. And just to give the full
2 story, in fairness, what the food service companies will say
3 is, well, it is much easier for us to police food safety
4 issues, uniformity, make sure we are getting what we think
5 we are paying for if it is all coming from one giant
6 facility as opposed to if we buy locally from a thousand
7 local farms, so that--

8 Senator McCaskill. Well, that may be true, but it
9 seems to me that would have a lot more credibility if we
10 took the rebate issue off the table.

11 Mr. Carroll. I would agree, Senator.

12 Senator McCaskill. I mean, if, in fact, they were not
13 getting the extra plus-up by going to the big guys, then we
14 really would, pardon the expression, have an apples-to-
15 apples comparison.

16 Mr. Carroll. Very fair.

17 Senator McCaskill. Yes. Okay. Yes.

18 Mr. Tiefer. If I can come in on that--

19 Senator McCaskill. Yes.

20 Mr. Tiefer. Although theoretically it is possible in
21 the prime vendor program for the troops in Iraq and
22 Afghanistan to buy from a particularly good supplier for
23 whatever reason they think that that is a good supplier, the
24 actual situation is that there are contractors at both ends
25 of the transaction. The dining facilities in Afghanistan

1 are run by--it used to be KBR.

2 Senator McCaskill. Right.

3 Mr. Tiefer. Now it is DynCorps and Fluor.

4 Senator McCaskill. Right.

5 Mr. Tiefer. They may very well have a subcontractor
6 who does the actual running of the dining facility and they
7 just sort of coordinate at a higher level. So their
8 subcontractor talks to PWC or the other food service, U.S.
9 Food Service, Supreme Food Service, or wherever it is. At
10 no point does the desire of U.S. Government people to do the
11 right thing even come into the conversation.

12 Senator McCaskill. Right, because by the time it gets
13 to where the rubber meets the road, it is two or three
14 degrees removed.

15 Mr. Tiefer. Exactly, and it is quite probable that
16 each of the two corporations at both ends of the transaction
17 are pursuing their interests rather than anything else.

18 Senator McCaskill. Right. Right. You know, when you
19 were referring to the indictment in your testimony and you
20 talked about S.L., and whether it is Sara Lee or whether it
21 is not, but if you think about the environment in this
22 country as it related to contracting in Iraq compared to the
23 attitude in this country around contracting in World War II,
24 I think that is why my predecessor, Senator Truman, would
25 have an awfully hard time getting his arms around how big

1 this problem has become, because I think in another year,
2 another time, that company would have said, we refuse to
3 change the name on this because it appears that maybe you
4 are changing the name on it in order to profit more at the
5 expense of men and women who are fighting for our country in
6 a foreign land and I just do not think that would have been
7 put up with then.

8 But now, because everyone is so removed from it and it
9 has gotten so complex, they folded under the pressure from
10 PWC and did that and I think it--all of the companies that
11 are allowing themselves to be manipulated in order to plus-
12 up these contractors should be ashamed of themselves,
13 particularly in the context of Iraq and Afghanistan. I
14 think it is really inexcusable.

15 Why do you think, Professor Tiefer, that we see so
16 often that the Government keeps doing business with these
17 contractors? I mean, it is my understanding, correct me if
18 I am wrong, that the Government continued to do business
19 with PWC as they had a lot of evidence in front of them
20 about this fraud. Is that correct, or am I incorrect in
21 those facts?

22 Mr. Tiefer. You are, unfortunately, quite correct.
23 PWC not only had the giant Iraq food service product, it
24 also was one of KBR's major subcontractors on some stuff for
25 the logistics contract. So, yes, we had multiple flows of

1 renewing contracts going out to them.

2 Senator McCaskill. And are we still doing business
3 with them?

4 Mr. Tiefer. That is a good question.

5 Senator McCaskill. We will find out. We will find
6 out.

7 Mr. Tiefer. Let me say, when the indictment came down,
8 this was one of the ones where at least--this has not
9 happened in all cases--they were suspended and debarred from
10 obtaining new contracts. So there certainly was a period of
11 time they could not obtain new contracts, and I cannot tell
12 you whether that period came to an end or not.

13 Senator McCaskill. Okay. And that is extraordinary,
14 because I cannot tell you how many times in this Committee
15 we have talked about the failure to suspend and debar. It
16 has been something--okay.

17 We have talked about the fact that we believe the
18 guidance is pretty clear now, Ms. Fong, about FNS. I am
19 aware there is at least one legal case that is casting doubt
20 on FNS's ability to regulate contracts through the School
21 Lunch Program. Should we be concerned now that the
22 regulations that are currently written--the way they are
23 currently written are not enough to hold these contractors
24 in check as this case is working its way through the court?

25 Ms. Fong. Right. If you are referring to the decision

1 from Pennsylvania in 2009, we took a look at that and the
2 rebates that were the subject of that case were rebates that
3 had been paid between 1992 and 2002, which was under the
4 prior regulatory framework--

5 Senator McCaskill. I see.

6 Ms. Fong. --before FNS had the authority in place.
7 We--our sense is that with the current regulatory framework,
8 there should be a way to go after these kinds of situations.
9 But we are very happy to work with your staff to flesh out
10 that issue a little more.

11 Senator McCaskill. Okay. Okay.

12 Professor Tiefer, in your view, do the requirements
13 outlined in Part 31 apply to contracts executed under Part
14 12?

15 Mr. Tiefer. They do. I looked into this especially
16 for this hearing. These are commercial contracts. That is
17 why we asked whether Part 31 about payments applies to the
18 Part, I think it is 12 that is for commercial, and there was
19 a holding by the GAO. Extraordinarily, it was by PWC itself
20 that protested to the GAO that said, we are a commercial
21 company. This is a commercial contract. Requirements
22 should not apply to us. That is getting in the way of the
23 commercial way that rebates freely flow around. And the GAO
24 stomped on that. It is part of a continuing stream of
25 rulings that GAO gives about when--what concessions you have

1 to make to commercial contracts and when you keep Government
2 safeguards, and this is one of the Government safeguards
3 that GAO wanted to keep.

4 Someone mentioned to me, though, that it is either the
5 GAO ruling is not the end, you can go to the Court of
6 Federal Claims, and someone says that issue is pending in
7 the Court of Federal Claims, so there is still some
8 ambiguity.

9 Senator McCaskill. Since there have been protests with
10 GAO and we think those have been resolved appropriately,
11 what, if anything, are things specifically that you all can
12 bring to our attention today either that you think we need
13 to further investigate in this very murky area of rebates or
14 marketing incentives or extra juice for the middleman,
15 whatever you want to call it, what other investigations do
16 you think we can be doing from this Committee, or what
17 legislative fixes could we do that would clarify contracting
18 law as it relates to the ability of the Federal Government
19 to enjoy the discounts they get because of the amount of
20 volume they are purchasing?

21 Mr. Tiefer. If I can put one answer to that, I
22 completely agree with Inspector General Fong earlier who
23 said that identifying rebates, clearer clauses in the
24 contracts to identify all manner of rebates, is necessary,
25 and I thought that was a very healthy suggestion.

1 I would add that there need to be audit clauses, that
2 we need to get the auditors in on this situation. Let me
3 say, if someone says to me, why, that is ridiculous, of
4 course, the auditor is already in on this, it is a fixed-
5 price contract.

6 Senator McCaskill. Right.

7 Mr. Tiefer. There are very limited capacities for
8 auditors to go in. If you try to put auditors in now, it is
9 quite possible that the industry will challenge this and
10 will say, look, the audit clause speaks of cost
11 reimbursement contracts, time and materials contracts, but
12 it does not say fixed-price contracts, so the audit clause
13 does not apply. And that applies in spades to the problem
14 of looking at the suppliers, which is often necessary.
15 Unless you have a flow-down clause in the main contract that
16 says that the auditors can look at the suppliers, a
17 supplier--if an auditor shows up, a Federal auditor shows
18 up, says, who are you, which Government are you with--

19 Senator McCaskill. Right.

20 Mr. Tiefer. --we never heard of you. The United
21 States? Are you somewhere around here?

22 Senator McCaskill. Right. Right. So that would be
23 something that we could actually require. And, by the way,
24 I know this is possible to do because in Medicare Part D,
25 they actually specified that the Government was not allowed

1 to negotiate for volume discounts. So that certainly would,
2 I think, from my--if I can remember back to legislative
3 construction in law school, which I am trying to live every
4 day--I think that would mean that there is an assumption
5 that the Government can always negotiate for volume
6 discounts unless they are prohibited from doing so by law,
7 like they are in Medicare D. So it seems to me that this is
8 something that we need to underline and put an exclamation
9 point on.

10 Anything else from anyone else about what we can be
11 doing? Auditing clauses and identifying the rebates in the
12 contracts. Are there other things that you think we need to
13 be doing?

14 Mr. Carroll. Well, if there was a mechanism, and I
15 have no expertise whatsoever in legislative drafting, but if
16 there was a mechanism to move the rebates up so that they
17 appear on invoices.

18 Senator McCaskill. Transparency.

19 Mr. Carroll. Transparency--

20 Senator McCaskill. On the invoice.

21 Mr. Carroll. Right. And then it is hard to see how
22 anybody could have any objection to regulating this, as long
23 as it is--if the question is, we just want to know what is
24 going on and then we are negotiating on fair territory.

25 And one other thing I wanted to pick up on what

1 Professor Tiefer raised, and I think you also raised,
2 Senator, is this issue of why are companies paying this, and
3 I think to tell you that in some conversations with vendors,
4 the sense is if we do not pay them, we do not get access to
5 the markets, and food service companies like the large ones
6 have enormous markets. So we may not like paying them, but
7 we are going to get shut out if we do not. So I would think
8 that you would have some constituency there. It would not
9 be a completely one-sided battle. I think that there are a
10 lot of entities who would like to eliminate this practice.

11 Senator McCaskill. So the vendors would probably be on
12 our side?

13 Mr. Carroll. I suspect.

14 Senator McCaskill. Yes. I bet you that is correct.
15 And I know the local independent producers would be.

16 Mr. Carroll. Absolutely, Senator.

17 Senator McCaskill. Right.

18 Ms. Fong. One issue that we would like to put on the
19 table, as you mentioned, suspension and debarment as a
20 remedy, we have been trying to give some thought to that, as
21 to whether suspension or debarment would be appropriate or
22 available with respect to food service management companies.
23 And the sense that we have is that the FAR, the Federal
24 Acquisition Regulation, would not allow a procurement
25 debarment for an FSMC because the FSMC is not a contractor

1 with the Federal Government--

2 Senator McCaskill. I get it.

3 Ms. Fong. --and so that is a big issue.

4 Then the other question is, is there any way--because
5 the food--

6 Senator McCaskill. But we could fix that
7 legislatively.

8 Ms. Fong. I think that--

9 Senator McCaskill. We could say, if the flow of
10 dollars are Federal dollars, then any agents that are hired
11 to run programs that are funded through Federal dollars must
12 be subject to Federal laws of suspension and debarment for
13 failure to perform under the contract. I would think we
14 could do that.

15 Ms. Fong. I think that would be worth exploring.

16 Senator McCaskill. We do an awful lot with putting
17 handcuffs on everyone about what they can do and not do if
18 it is Federal money. I cannot imagine that we could not do
19 that. It seems like, to me, that is much more logical than
20 a lot of the handcuffs we have out there right now. So,
21 okay, that is a good suggestion.

22 Anything else? Inspector General Fong? Mr. Carroll?
23 Professor Tiefer?

24 Mr. Tiefer. Well, you talked about what investigations
25 could be done. Now, you have a lot on your plate, Senator.

1 You look at a whole wide array, and I do not know if I want
2 to bog you down on this one, but I would think a survey of
3 some of the contractors here, whether it is the suppliers or
4 the main vendors--Mr. Carroll noted the wide range of
5 discounts involved, the percentages involved, and it would
6 be interesting to get some sense. They have to answer under
7 oath if they are surveyed.

8 Senator McCaskill. That is exactly right.

9 Mr. Tiefer. Yes.

10 Senator McCaskill. Well, I will tell you that the
11 Subcommittee intends to submit document requests at the
12 close of this hearing to agencies, to Federal agencies and
13 companies with food service management contracts. We are
14 going to try to get an accounting of the retention of
15 rebates by the contractors and an understanding of the
16 policies that are in place at the agencies that contract for
17 food service management. We want to address through these
18 document requests the potential issues in domestic
19 contracting, such as that seen in the New York Schools
20 contracts and the problems discussed by DLA. The
21 investigation should also hopefully shed some light on
22 service contracts in contingency operations, as demonstrated
23 by the Agility case and the support for further oversight
24 and transparency.

25 I cannot go into details, but I got second- and third-

1 hand that there was actually a conversation that was had in
2 Afghanistan not too long ago about a potential contract and
3 someone mentioned that that might not be a good idea because
4 of the quote-unquote team, and my name was used, but my name
5 should not be used because I think they were referring to
6 the team of people who work on this Committee who feel very
7 strongly about really shedding the light on contracting
8 abuses in the Federal Government and the amount of money
9 that is being wasted as a result of those abuses.

10 And I want to take this hearing to congratulate the
11 field of Government auditors on the arrests that were made
12 yesterday, the Inspector Generals that worked on that case
13 involving the Army Corps of Engineers, an Alaska Native
14 Corporation, and the blatant and brazen fraud that was going
15 on between Government contracting officials and this company
16 involving massive kickbacks and massive over-billings to the
17 Army Corps of Engineers. That case came about because of
18 people like you, and I know what you would do if you had the
19 opportunity right now. You would point to your staff and
20 the great work they do, because there are thousands of
21 Government auditors out there that deserve the respect and,
22 frankly, the funding of this Government because they are
23 really doing the heavy lifting in this regard. So
24 congratulations to all the Government auditors involved in
25 that case and the many others that do not get the attention

1 they deserve.

2 We will continue down this road. If I could ask that
3 you all continue to be cooperative with the staff on this
4 investigation, we are going to keep going down this road
5 because I think there is real money here. I think there are
6 significant dollars that we can save in the purchase of food
7 by the Federal Government if we pull this thread all the way
8 to its logical conclusion and clean this area up once and
9 for all and provide that transparency. It will allow
10 everyone to figure out what they are paying for what and
11 whether they are getting the best deal.

12 And please convey to your boss, Mr. Carroll, that we
13 appreciated his cooperation with allowing you to come here
14 today. I have taken that train back and forth and it is
15 easier sometimes than the shuttle. I do not know which you
16 took, but I am glad you came here today to help us with
17 this, and we will continue to call on you for the expertise
18 you have developed in the cases you have worked on.

19 I thank all of you for what you have provided here
20 today and we will continue to be in contact with you as we
21 continue down this path to try to clean this up once and for
22 all. Thank you all very much for today.

23 [Whereupon, at 3:03 p.m., the Subcommittee was
24 adjourned.]